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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY ASHTON, EIRO FUKUDA, ANN MARIE
SULLIVAN and NANCY DRAINVILLE CHOMYSZAK

Appeal 2009-008829
Application 10/774,768
Technology Center 3700

Before WILLIAM F. PATE, III, LINDA E. HORNER, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Gregory Ashton et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-3, 5, 6 and 21-33. We have jurisdiction under 35 U.S.C. § 6(b). Appellants' counsel presented oral argument on January 13, 2011.

We REVERSE.

THE INVENTION

Appellants' claimed invention is directed to disposable absorbent articles having a handle to assist the wearer in application and removal of the article (Spec. 1:8-10).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. An absorbent article having a front region, a back region, a belt zone extending circumferentially about the absorbent article, a wearer-facing surface, and a garment-facing surface; said absorbent article comprising:
 - a) a chassis;
 - b) at least one sidewall adjacently disposed to the chassis and connecting the front region to the back region thereby forming a leg opening and a waist edge; said sidewall comprising an ear or a panel, and
 - c) at least one handle for assisting in the application of the article onto a wearer, wherein the handle is a flap comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall, wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap, wherein the handle is disposed adjacent to either the chassis or sidewall and wherein the absorbent article is a pull-on garment.

THE REJECTIONS

The following rejections² by the Examiner are before us for review:

1. Claims 1-3, 5, 6 and 23-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by LaVon (US 2002/0091368 A1, published Jul. 11, 2002).
2. Claims 21, 22 and 31-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over LaVon.

ISSUES

The issues before us are: (1) whether the Examiner erred in finding that in LaVon, flap 620 is a handle and fasteners 625 are longitudinal welds, as called for in independent claim 1 (Reply Br. 1; App. Br. 3, 4); and (2) whether the Examiner erred in finding that in LaVon, flap 620 is a handle, as called for in independent claim 33 (App. Br. 8).

ANALYSIS

Rejection of claims 1-3, 5, 6 and 23-30 under 35 U.S.C. § 102(b)

Claim 1 calls for, *inter alia*, “at least one handle for assisting in the application of the article onto a wearer, wherein the handle is a flap comprising a stratum, . . . wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds.”

Handle Limitation

The Examiner found (1) that LaVon describes “a disposable absorbent article such as a diaper 20,” “wherein at least one handle is a flap 620” (Ans.

² The rejection of claims 1, 6, 27, 29 and 30 under 35 U.S.C. § 102(b) over Yoshikazu (Final Rejection 5) has been withdrawn by the Examiner (Ans. 2).

3) (emphasis bolded); and (2) that the term “handle,” given its plain meaning, includes “any structure that is capable of being grasped by the user” (Ans. 5).

Appellants contend that Lavon’s flap 620 is not a handle, as called for in independent claim 1 (App. Br. 3-4).

Claim 1 requires that the handle assist in the application of the absorbent article onto a wearer.

LaVon describes that

Fig. 7 shows a perspective view of absorbent core 428 comprising a removable absorbent core component such as removable back panel 430. . . . back panel 430 is removable from the absorbent article 600 through opening 610. . . . As shown in Fig. 7, to remove the back panel 430 flap 620 is lifted, and back panel 430 is extracted out of the absorbent article through opening 610. Flap 620 may be secured over opening 610 by suitable fasteners such as fasteners 625.

(P. 13, para. [0115]).

LaVon is silent as to the particular type of fasteners that secure flap 620 over opening 610. However, LaVon’s Figure 7 appears to show that the fasteners are hook-and-loop type fasteners.

LaVon further describes that

A flap having VELCRO or adhesive strips can be placed over the openings or discontinuities formed in the absorbent article to provide for fluid impermeability when the flap is closed, but allowing for multiple openings and closings to access the removable absorbent core components and insertion of replaceable components.

(P. 14, para. [0122]).

We find that LaVon's flap 620 (1) provides fluid impermeability when the flap 620 is closed, (2) is intended to be opened and closed multiple times to access the removable absorbent core components and insert replaceable components, and (3) is secured by releasable fasteners (VELCRO fasteners or adhesive strips).

We find that if a user were to grasp onto the flap 620 to assist in the application of the absorbent article onto a wearer, the flap would release from the fasteners on the absorbent article.

Since LaVon's flap 620 provides fluid impermeability when the flap 620 is closed, and is intended to and does release from the fasteners on the absorbent article when the flap 620 is grasped by a user, we find that LaVon's flap 620 is neither intended to be a handle nor would it function as a handle to assist in the application of the absorbent article onto a wearer, as called for in independent claim 1.

Longitudinal Welds Limitation

Claim 1 further requires that the flap be joined to the garment-facing surface of the article by opposing longitudinal welds.

The Examiner found (1) that in LaVon, "the flap 620 is joined to the garment-facing surface of the article 600 by opposing longitudinal welds/fasteners 625" (citing to Appellants' Specification in support thereof) (Ans. 4) (emphasis bolded); and (2) that "[s]ince Lavon [*sic*, LaVon] discloses fasteners 625 to be releasable hook and loops/VELCRO or *adhesive strips* . . . , the fasteners are dynamic mechanical bonds or 'longitudinal welds' as required by Appellant's [*sic*, Appellants'] Claim 1" (Ans. 6) (emphasis bolded).

Appellants contend (1) that Appellants' Specification does not equate hook-and-loop fasteners with welds (App. Br. 5) and (2) that LaVon's releasable fasteners are not welds (Reply Br. 1).

Appellants' Specification describes that "[t]he flap 200 may be welded by an adhesive, heat bonds, pressure bonds, ultrasonic bonds, dynamic mechanical bonds, or combinations thereof" (Spec. 14: 13-14) (emphasis bolded).

The ordinary meaning of the word "weld" as a verb includes "a: to unite (metallic parts) by heating and allowing the metals to flow together or by hammering or compressing with or without previous heating b: to unite (plastics) in a similar manner by heating" and as a noun includes a "union by welding."³

The ordinary meaning of the word "unite" includes "a: to put together to form a single unit b: cause to adhere."

A person having ordinary skill in the art would understand (1) that a weld is a permanent bond, and (2) that the bonds described in Appellants' Specification, as reproduced *supra*, are permanent bonds, not releasable bonds.

As set forth *supra*, LaVon describes releasable fasteners. We find that LaVon's releasable fasteners provide a releasable bond.

Since LaVon's releasable fasteners provide a releasable bond, LaVon's releasable fasteners do not describe the permanent bond of a weld, as called for in independent claim 1.

We reverse the rejection of independent claim 1 and dependent claims 2, 3, 5, 6 and 23-30.

³ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1996)

Rejection of claims 21, 22, 31 and 32 under 35 U.S.C. § 103(a)

The Examiner's conclusion of obviousness regarding the subject matter of claims 21, 22, 31 and 32, which depend from claim 1, does not remedy the deficiency in LaVon as set forth *supra* regarding independent claim 1 (Ans. 5).

Thus, we reverse the rejection of claims 21, 22, 31 and 32.

Rejection of claim 33 under 35 U.S.C. § 103(a)

Claim 33 calls for, *inter alia*, "at least one handle for assisting in the application of the training pant onto a wearer, wherein the handle is a flap comprising a stratum." Thus, regarding the handle, claim 33 is similar in scope to independent claim 1.

As we found *supra* regarding independent claim 1, LaVon's flap 620 is neither intended to be a handle nor would it function as a handle to assist in the application of the absorbent article onto a wearer.

Thus, the Examiner's conclusion of obviousness regarding the subject matter of independent claim 33 (Ans. 5) does not remedy the deficiency in LaVon as set forth *supra* regarding independent claim 1.

Thus, we reverse the rejection of independent claim 33.

CONCLUSIONS

The Examiner has erred in finding that in LaVon, flap 620 is a handle and fasteners 625 are longitudinal welds, as called for in independent claim 1.

The Examiner has erred in finding that in LaVon, flap 620 is a handle, as called for in independent claim 33.

DECISION

The decision of the Examiner to reject claims 1-3, 5, 6 and 21-33 is reversed.

REVERSED

mls

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